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Book E21











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**A CANDID STATEMENT**

RESPECTING

**The Philadelphia County Ticket.**



**Philadelphia, January, 1839.**

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# A CANDID STATEMENT

RESPECTING

## *The Philadelphia County Ticket.*

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The act of the 15th of February, 1799, forms the basis of the general election laws of the commonwealth. It has however, been amended in several important particulars. It is our object, first to show exactly what the law is, so far as it is applicable to the late elections in the county of Philadelphia—and then to apply it to the facts of the case which are indisputable.

By the second section of the act of 1799, as amended by the act of 17th of March, 1806, "each and every town, township, ward or district, shall choose one inspector," on the Friday next preceding the first Tuesday in October, in each and every year; and, by the 4th section, the inspectors for each election district shall, on the morning of the day of election, take to their assistance not less than three, nor more than five, respectable citizens qualified to vote, who shall be judges of the election in such districts.—This is the general rule. The city and incorporated districts of the county of Philadelphia are, by various subsequent acts, governed as follows:—The city is divided into fifteen wards; each ward elects two inspectors; and the inspectors of each ward choose a judge, making fifteen judges. The incorporated district of the Northern Liberties is divided into seven wards, each ward has two inspectors, and a majority of the fourteen inspectors appoints seven judges. The district of Spring Garden is divided into four wards; each ward elects two inspectors, and a majority of inspectors appoints the judges. The district of Kensington is divided into five wards; each ward elects two inspectors, and a majority appoints five judges. The district of Southwark is divided into five wards; each ward elects two inspectors; and the inspectors of each ward choose a judge, making five judges. The township of Moyamensing, has two inspectors, who choose four judges; and one inspector and two judges sit at one window, denominated "East Moyamensing;" and the other inspector, and two judges, sit at another window, denominated, "West Moyamensing." By the Registry Act of the 16th of June, 1836, the inspectors in the city and above named incorporated districts and township, are elected at the general election, and are required to be residents of the ward, district, or township, in which they are elected,—a separate count is to be made of such elections, and duplicate returns to be made of the same; one to be delivered to the Sheriff, who shall, within five days after the said election, cause the

same to be published twice, in at least two of the daily papers of the city and county of Philadelphia; and the other to be deposited with the Commissioners of the county of Philadelphia.

The remaining twelve election districts of the county of Philadelphia, viz: Passyunk, Kingsessing, Blockley, Roxborough, Germantown, Bristol, Lower Dublin Byberry and Moreland, Oxford, Unincorporated Northern Liberties, North Penn Township, South Penn Township, and West Philadelphia, are governed by the act of 1799, as to the election of inspectors, and the appointment of judges,—except that Germantown has two inspectors.

The inspectors, judges, and clerks, are either sworn or affirmed according to the act of 1799, and at the close of the judge's oath or affirmation, is the following clause.—

*“And that I will make a true and perfect return of the said election, and in all things truly, impartially, and faithfully perform my duty respecting the same, to the best of my judgment and abilities.”*

The County Commissioners are bound to cause to be delivered to the inspectors of the several election districts in the county, a sufficient number of *blank forms, and returns, made out in a proper manner and headed as the nature of the election may require*, under a penalty of fifty dollars on each Commissioner, for any neglect thereof.

After describing the manner in which the tickets shall be received by the inspector, and deposited in the proper boxes, which are also to be provided by the County Commissioners, the act then provides “That when the poll shall be closed, the aforesaid boxes, wherein the folded papers or tickets are deposited, shall be opened, one by one, and the judges, in the presence of the inspectors, shall deliberately take out the said papers or tickets, and read aloud the name or names written or printed thereon respectively; whilst two or more of the clerks shall carefully enter and keep a count of the same on paper prepared for that purpose, so that the number of votes FOR EACH CANDIDATE TALLIED THEREON may be readily cast up and known.”

By the 12th section of the same act, it is enacted, “That as soon as ALL THE VOTES SHALL BE READ OFF AND COUNTED, the judges of each district, in case the county be divided into districts, shall make out under their hands, *a fair state or certificate of the number of votes which shall have been there given for each candidate, distinguishing the station or office he was voted for*—which numbers shall be expressed *in words at length*, and not in figures only”—“and ONE of the said JUDGES shall take charge of such certificate, and on the FOURTH [THIRD, being Friday, by act of 17th of March, 1806,] day after the election, produce, the same [that is the certificate] in a MEETING of ONE JUDGE from each district within the same county at the Court House, and FOR THE CITY AND COUNTY OF PHILADELPHIA AT THE STATE HOUSE—for which services he shall be allowed, out of the county treasury, ten cents for every mile he shall necessarily have travelled in coming from his proper election district to the said Court House, and in returning from thence to his own home”—and THE JUDGES OF THE SEVERAL DISTRICTS OF THE COUNTY SO

MET, shall add together the number of votes which shall appear to be given to any person or persons, *who shall thereupon be found to be highest in vote or elected as Representative, Senator, or other officer, and shall FORTHWITH make out duplicate returns of the election of such person or persons as shall be so elected and chosen for any office or station, which the electors of the county are entitled to choose of themselves, unconnected with any other counties*”—and when a Governor is to be chosen, like returns of all the votes given for any person or persons for Governor—and having lodged ONE OF EACH OF THE SAID RETURNS IN THE OFFICE OF THE PROTHONOTARY OF THE COUNTY, shall enclose, seal, and direct the others, when the same relates to the choice of a Governor, to the Speaker of the Senate—when to the election of a Senator or Senators, to the Senate—when to a member or members of the House of Representatives, to the House of Representatives—when to a Sheriff or Coroner, to the Secretary of the Commonwealth—when to a Commissioner or Commissioners for the County, to the Clerk of Quarter Sessions of the said county.

“And one of the said judges [return judges] shall deliver *the returns, so sealed and directed*, to the Sheriff of the county, *endorsing thereon the time of delivering the same*; and the said Sheriff shall, within five days thereafter, cause the return directed to the clerk of the Court of Quarter Session to be delivered agreeably to the said direction—and having received the returns of any district for the election of a Senator or Senators, or one or more members of the House of Representatives, *which may by law be directed to be completed and made out within the said county* for the same election, the said Sheriff shall forthwith, by himself or his deputy, transmit the whole of the said returns to the *Secretary of the Commonwealth*, so that the same shall be delivered into the Secretary’s Office within twenty days after the last of the returns shall have been received by the said Sheriff—in which case, and not otherwise, he shall be entitled to receive from the State Treasury, on warrants drawn by the Governor, *ten cents for every mile he shall necessarily travel in going from and returning to his proper county.*”

This section provided for the case of a single county divided into several election districts. The next section, the 13th, provides for the city of Philadelphia, and any county in which the election is holden only at one place—and in these the returns are to be made without delay, that is, on the day of the general election. It then provides for the case of two or more counties composing a district for the election of members for the Senate or House, and that—the judges, met as aforesaid. on the Friday after the election at their Court House, shall make out a fair statement, under their hands, of all the votes given for any person or persons as members of either House, and one of the judges “*shall take charge of such* *ficate, and produce the same in a meeting of one judge from each county*, at such place in the said district as is or shall be appointed by law for that purpose, on the seventh day [Tuesday] after the election, and the said judges shall then and there *cast up the several county returns*, and make duplicate returns of the person or persons chosen for the said district”—one of such returns to be deposited in the office of the Prothonotary of the



county where they meet, and the other to be delivered to the Sheriff of the said county, sealed and directed as is before prescribed, and the day on which the same is so delivered shall be endorsed thereon.

The returns delivered to the Prothonotary, which certify the election of a Commissioner or Commissioners, "*shall be, by the said Prothonotary, laid before the Court of Quarter Sessions, which shall order the same to be recorded according to law*"—and each Prothonotary, as soon as all the other returns are delivered into his office, "*shall make a copy thereof and certify the same, and shall forthwith transmit the said copy, under a sealed cover, directed to the Secretary of the Commonwealth, by placing the same in the nearest Post Office.*"

By the 16th section, "*the judges of the elections who shall meet at their respective Court Houses, or other place appointed by law, to compare the several lists and certificates, and to cast up the number of votes for each candidate, shall give notice in writing, to each member of the House of Representatives and Senate, who shall be elected and reside within their respective districts, within ten days next after the day of making up the return.*"

As soon as the election is finished, by the 22d section, one of the lists of voters, tally papers, one of the certificates of the oath or affirmation taken and subscribed by the inspectors, judges, and clerks, shall be carefully collected and deposited in one or more of the boxes, which being closely bound around with tape, "*shall be sealed by two or more of the judges of the election, and one or more of the inspectors, and shall be delivered to the nearest justice of the peace of the county, to be kept by him to answer if need be, the call of the joint or separate committees of the Senate and House of Representatives, who may be appointed to try the merits of any such election*" "and the other lists of voters, tally papers and certificates, shall be enclosed by the said judges in a sealed cover, directed to the Prothonotary of the county, and shall, by some one of them, be delivered into his office, where the same shall be filed—and it shall be the duty of the Prothonotary to give a certified copy of the said lists to any person or persons applying for the same, on payment of the usual fees as in other cases."

By the Registry Act of 16th June, 1836, the original registry in each ward in the city and incorporated districts, is returned to the Sheriff who is obliged to "*deposit the same in the office of the Clerk of the Court of Common Pleas, there to remain of record.*"

The act of 1799 *inflicts the penalties and disabilities of perjury on all persons wilfully and corruptly making a false oath or affirmation; and punishes any judge, inspector, or clerk, convicted of any wilful fraud in the discharge of his duties, with a forfeiture of not less than one hundred nor more than five hundred dollars, and a disability, for seven years, to hold any office of honor, trust or profit, in this Commonwealth, and for the same term disables such individual to elect or give his vote at any general or special election to be holden within this State. And any Prothonotary or Sheriff neglecting or refusing to perform the duties enjoined upon them, or wilfully misbehaving in the doing thereof, shall forfeit a sum not exceeding five, nor less than two hundred dollars, and suffer imprisonment for any term not exceeding six months.*

The act of 1799 makes no provision as to the election and returns of

members of Congress;—other acts of Assembly, temporary in their nature, providing for such cases.

By an act passed 16th March, 1791, the State was divided into eight districts, electing eight members of Congress; and the election was fixed for the second Tuesday of October, of that year. The return judges, after making out duplicate returns, were directed to cause one to be delivered to the Sheriff of the county in which they were convened, and the other to be deposited in the office of the Prothonotary of such county. The Sheriff, within twenty days after the election, was bound to deliver or safely transmit the return to the Governor, who, thereupon, was bound to declare, "*by proclamation, the name of the person to him RETURNED as duly elected in each respective district*"—and to transmit such return to the Speaker of the House of Representatives. This act was temporary, being limited to this election only.

On the 7th April, 1792, another act was passed, providing for the election of members of Congress on the second Tuesday of October, and of electors of President and Vice President of the U. States on the first Tuesday of November in that year. Both were to be elected by a general ticket. Duplicate returns were to be made out in the different counties, one deposited with the Prothonotary, and the other handed to the Sheriff, to be delivered by him "within twelve days after each respective election to the Governor of this Commonwealth," who shall enumerate and ascertain the number of votes for each and every person voted for as Representatives and Electors, respectively, and shall thereupon declare the names of the person duly elected and chosen as aforesaid;" and he is to transmit a return of the election of Representatives, together with the documents whereon the same is founded, to the Speaker of the House of Representatives of the United States.

This act, which made the Governor the returning judge or officer, was also temporary, being confined to the election of 1792.

On the 22d April, 1794, another act was passed dividing the State into twelve districts for the election of thirteen members of Congress. The elections to be held on the second Tuesday of October, 1794, and biennially until a new census. By this act, the judges of the election in the city of Philadelphia, and in each county erected into a separate district, after having formed the return of the whole election in said city and counties respectively, were obliged within ten days, to cause the said return to be delivered to the Sheriff of the said city and counties respectively, and a duplicate to be deposited in the office of the Prothonotary of said city and counties respectively.

The Sheriff, within forty days after the election, was to deliver or safely transmit the *return* to the Governor, who was bound thereupon to declare by proclamation, the name of the person or persons *returned* to him as duly elected, and transmit the *returns*, so made, to the House of Representatives of the United States.

This act was in force at the passage of the general election law of 1799, and formed with it, the general law governing the general elections of Pennsylvania. By these acts the returns of the election of Governor, members of the House and Senate, County Commissioners, Sheriff and Coroner, and members of Congress, were to be delivered by one of the return judges

to the Sheriff, who delivered the County Commissioners return to the Clerk of the court of Quarter Sessions—and transmitted by himself or deputy, the returns for Governor, members of the House, Senate, Sheriff, and Coroner, to the Secretary of the Commonwealth, and either transmitted or delivered the return of members of Congress to the Governor,

By an act passed the second April, 1802, the State was divided in eleven districts for the election of eighteen members of Congress. This act substantially re-enacted the general provisions of the act of 22d April, 1794; and the Sheriff still remained the hand to deliver the returns to the Governor, who was to proclaim the names of the persons *returned toim as duly elected*.

On the 4th April, 1803, an act was passed altering and amending the general election law in several particulars; and by the sixth section it was enacted—"That in cases in which counties consist of more than one election district—or in cases where *one or more members of Congress, or members of the Senate or House of Representatives, of the General Assembly of the commonwealth, are to be elected*; and in case of the election of Governor—the judges from each county, and the *judges from each election district*, whose duty it shall be agreeably to the aforesaid act [of 1799,] to take charge of the certificate or certificates of the elections of said counties or districts when met—*shall at the time and place appointed by law, cast up the several county or district returns, as the case may be—and make duplicate returns of the person or persons chosen for the county or counties, if there is more than one county connected in the election, and one of each returns, if there are more than one, shall be deposited in the Prothonotary's office of the county in which they meet; and one other of the returns, under a sealed cover, directed to the Secretary of the Commonwealth, shall be by the said judges, placed in one of the nearest post offices; and it shall be the duty of the said judges to transmit to each of the persons elected to serve in Congress, or in the Senate, or House of Representatives, a certificate of the return of his election; and each judge who shall attend to cast up and make out said returns, shall be allowed ten cents for every mile which he shall necessarily travel in performing that service.*

This section, it will be perceived, dispenses with the services of the Sheriff entirely as to the returns for Governor, members of Congress, and members of the Senate and House of Representatives of the Commonwealth; and devolves the whole duty of making out, depositing and forwarding the returns, upon the return judges—who deposit one set of returns in the Prothonotary's office, and send the other set of returns under a sealed cover, directed to the Secretary of the Commonwealth, by mail.

This act, however, left the returns for Sheriff and Coroner still to be transmitted by the Sheriff, who was entitled to receive from the State Treasury ten cents per mile for his mileage. This anomaly was corrected by the act of 13th April, 1807, which directs the returns for Sheriff and Coroner to be forwarded to the Secretary of the Commonwealth in the same manner as returns are directed to be sent by the sixth section of the act of 1803, just quoted.

The preamble to this supplement to the act of fourth April, 1803, explains the reasons of the Legislature for passing it, and it is as follows:—"Whereas in and by the act to which this is a further supplement, it is directed



that the returns of elections of *members of Congress, members of the Senate, members of the House of Representatives, and of Governor*, SHALL BE SENT BY MAIL to the Secretary of the Commonwealth, but the said law does not make provision for sending the returns of *Sheriff and Coroner* in the same manner—from which omission MUCH INCONVENIENCE AND EXPENCE RESULT”—and then follows the remedy in the provision which we have just stated.

The law, then, subsequent to this act, stood thus—that the return judges sent by mail, to the Secretary of the Commonwealth, the returns for Governor, members of Congress, members of the Senate, members of the House of Representatives, Sheriff and Coroner; and that the only return which was to be delivered by them to the Sheriff, was the County Commissioners' return, which he was bound to deliver to the Clerk of the Court of Quarter Sessions, and for which service he could charge no mileage, as their offices must both be kept in the same county town, and generally in the same building.

The act of the 20th March, 1812, divided the State into fifteen districts for the election of twenty three members of Congress. This dispensed with the Sheriff's agency, but allowed the return judges to send the returns for members of Congress to the Secretary of the Commonwealth, by mail or otherwise. This act has expired.

The act of the second April, 1822, divided the State into eighteen districts for the election of twenty six members of Congress; and divided the city and county of Philadelphia into three districts. The second, third and fourth sections of this act are in force, being expressly continued by the act of 1832; and by the last section, the return judges, after depositing one return in the office of the Prothonotary of the country, are “*to cause a duplicate thereof, signed and sealed in the same manner as the said returns, under a sealed cover, directed to the Secretary of the Commonwealth, to be placed forthwith in the nearest post office, or to be otherwise, within twenty days, safely delivered to him; and they shall transmit to each of the persons elected a certificate of the returns of his election.*”

The act of the ninth June, 1832, divides the State into twenty-five districts for the election of twenty-eight members of Congress; and the city forms the second district, and elects two members, whilst the county is divided into two districts, the first and third, each electing one member. By this act it is made the duty of the Governor, “*on the receipt of the returns transmitted to the Secretary of the Commonwealth, to declare by proclamation, the names of the respective persons returned to [him as duly elected in each district; and he shall, as soon as conveniently may be thereafter, transmit the said returns, so made to him, to the House of Representatives in the Congress of the United States.*”

The election of County commissioners and County Auditors, is provided for in the act of 15th April, 1834. The returns for County Commissioners are made according to the act of 1799—one being deposited in the Prothonotary's office, which he is bound to lay before the Court of Quarter Sessions, which shall order the same to be recorded according to law—and the other is to be delivered by the Sheriff to the Clerk of the Court of Quarter Sessions. Each Commissioner is obliged to take the oath or affir-



mation prescribed by the act of 1834, which oath or affirmation, certified by the person before whom it is taken, must be filed by such Commissioner, within ten days, in the office of the Clerk of the Court of Quarter Sessions; and on taking his seat at the Board of Commissioners, each new Commissioner must "*produce a certificate, under the hand and seal of the Clerk of the Court of Quarter Sessions of the same county, of his election and qualifications according to the provisions of this act.*"

By the act of 30th March, 1791 the Court of Common Pleas in each county appointed three Auditors, to audit, settle, and adjust the public accounts of the County Treasurer and County Commissioners. By the act of the 16th March, 1809 the auditors were directed to be elected *annually* by the electors in each county, which was so far altered, in 1814 as to have one Auditor elected annually for a term of three years, which is the law at present. By the fourth section, of the act of 1809, which section is still in force it is made the duty of the return judges, when met, "*to make a return of the persons elected for Auditors; which return shall be by one of the judges, deposited with the Prothonotary of the proper county; and it shall be the duty of the Prothonotary to inform the Auditors of the time of their meeting annually, at least ten days previous thereto.*" This is the only return required by law—and each Auditor, is obliged to take an oath or affirmation, which certified by the person before whom it is taken; must within ten days, "*be filed by such Auditor in the office of Clerk of Quarter Sessions of the proper county.*"

The act of the 29th March 1836, prescribes the mode of submitting the amendments to the Constitution, agreed upon by the Convention, to a vote of the people; and it directs that the election shall, in all respects, be conducted as the general elections of this Commonwealth are: and that it shall be the duty of the return judges of the respective counties thereof, *first having carefully ascertained the number of votes given for or against the said amendments,*" to make out duplicate returns thereof in words at length and not in figures only—one of which returns so made, shall be lodged in the Prothonotary's office of the proper county: and the other sealed and directed to the Secretary of the Commonwealth, which shall be, by one of the said judges, delivered to the Sheriff, with the other returns required by law, to be delivered to the Secretary of the Commonwealth.

The individual who drafted this section, which is very badly worded, evidently did not understand the general election laws of the Commonwealth, and had only taken *Purdon's Digest*, and, finding that the twelfth section of the act of 1799 was not marked as supplied in part, or altered or amended, assumed that it was still the law of the land; when, if he had turned over a few more pages of the book, he would have found the act of the fourth April, 1803, which was expressly made to amend the act of 1799, and especially this section in the particulars we have already stated. He would also have found in the seventh section of the act of 1803, a clause which would have removed all doubts as to the change made by the Legislature as to the delivery of certain returns to the Sheriff. This section expressly enacts "*that all and every part of the aforesaid act, entitled*

An act to regulate the general elections of this State,' passed the fifteenth of February, one thousand seven hundred and ninety-nine, which is by this act *altered, amended or supplied*, be and the same is hereby repealed and made null and void." This could have left no doubt on his mind, and if he had any, the act of 1807, *particularly if seen with its preamble in 4th Smith's Laws*, would have removed even the shadow of a doubt.

This amendment return is, therefore, the only return, which is to be sent to the Secretary of the Commonwealth, with which the Sheriff has any thing to do. The tenth section of the act of 1836 enacts that "it shall further be the duty of the Secretary of the Commonwealth, on receiving the said returns of the election for and against the amendments proposed by the Convention, to deliver the same to the Speaker of the Senate, on or before the first Thursday of the next session of the Legislature after said returns shall be so received, who shall open and publish the same in the presence of the members of the Senate and House of Representatives, on the next Tuesday thereafter, [second Tuesday in December] and, when the number of votes given for, and the number of votes given against, the said amendments shall have been summed up and ascertained, duplicate certificates thereof shall be signed by the Speaker of the Senate, one of which shall be filed in the office of the Secretary of the Commonwealth, and the other delivered to the Governor, whose duty it shall be to declare, by proclamation, whether the said amendments have been, or have not been, adopted by the freemen of this Commonwealth."

We have thus carefully collated all the laws upon this interesting subject, in order that every reflecting man may judge for himself, of the accuracy of the positions and results which we shall proceed to lay before the community.

It is conceded that when several persons are authorized to do an act of a public nature, which requires deliberation, they should all be *convened*, because the advice and opinions of all may be useful, though all do not unite in opinion. But it is also clear, that a decision may be made by a majority, and that there is no public body in which unanimity is required but a petit jury. The rule that, when powers are granted to several persons to transact *private business*, that all must join in the execution of the power, was never applied to *public business* of a judicial nature, nor to *public business* of a deliberative nature, though not strictly judicial. Still further, where a day and place is appointed for the meeting of said *public* agents to transact the *public business* committed to their charge, no meeting of a majority, *still less of a minority* of them, held clandestinely either before or after the regular meeting, can possibly be legal, and all acts done at such a meeting, whether by a majority or minority, are totally null and void; and no meeting can be a valid one unless all have notice of the time and place, and have an opportunity to be present and assist and take part in all the business entrusted to their care.

The rule then is clear that the majority of such public agents must govern, and that the minority have no power to affect or invalidate the acts of the majority, still less to do legally any act which can only be effected either by the whole number or a majority of that number.

To apply these indisputable general principles, the judges of the general elections are public agents, whose duties, as their name implies, are of a judicial nature and certainly of a deliberative nature. The original number

of not less than three nor more than five, directed by the act of 1799, in each election district, shows that the Legislature considered the business to be transacted of that nature that a majority must decide and govern. This is unquestionably the case on the day of the election; and the same rule extends, by common sense and uniform practice, to the meeting of the return judges on the Friday after the election, and to the meeting of the return judges of the different counties on the Tuesday following. The rule is only more obvious in the case of the city of Philadelphia, where the election is held at one place, and the whole business, including the returns, is finished by the judges in one day, and where it is probable that no single return was ever signed by the whole number of judges. The course of proceeding may be shortly stated.

The judges being appointed and sworn, attend throughout the day of the election, and if called upon, decide, by a majority, all questions submitted to them. After the poll is closed, they, in fact and in law, count the votes given, and make out, under their hands, a certificate of the number of votes given for each candidate—they assist at putting the tickets and other papers into proper boxes, and at their delivery to the nearest justice of the peace; and the other list and papers are sealed up by them, and delivered by one of them to the Prothonotary of the county.

One judge from each election district takes charge of the certificate from his district, and, on the third day (Friday) after the election, produces it in a meeting of one judge from each election district at the State House. The judges so met, proceed to add together the number of votes given for the persons found to be highest in vote or elected as Representatives, Senator, or other officer, and to make duplicate returns thereof, one of each of which is to be deposited in the Prothonotary's office, and the others to be placed by the judges in the nearest post office, directed to the Secretary of the Commonwealth. The exceptions are the County Commissioners' return, which is to be delivered to the Sheriff, and by him placed in the office of the Clerk of the Court of Quarter Sessions—and the return on the amendments which is handed to the Sheriff—and the return for Auditor, which is a single return, and is deposited in the Prothonotary's office by the judges. After the meeting of the judges adjourns, their powers are at an end, except so far as is necessary to carry out what has been already decided and performed in the meeting itself. In all questions before the meeting, a majority of course must govern, or otherwise a single judge might prevent the returns of a whole county. The judges give notice in writing to each member of the Senate and the House of Representatives of his election, and also transmit to them and the members of Congress certificates of the returns of their election.

The Sheriff has no power over either the original certificates from each election district, or the final return of the members elected, and is but in respect to them, merely a private individual. The Secretary of the Commonwealth has no power vested in him to decide upon returns—that belongs to the representative body; and the sole question in such case is—is the return signed by a majority of the judges? If it be a false return, the remedy is to contest the seat, by petition agreeably to the acts of Assembly—and *whoever has the greatest number of legal votes will be entitled to his seat.* A minority of the return judges, it is clear, can make no return, particularly when the majority have made a return. If six being a minority of the



seventeen, can make a legal return, then a minority of one judge can make it also; and five out of the fifteen city judges could return the members of the Select and Common Councils, the members of the Senate and House, and two members of Congress, in spite of the remaining ten. The result would be that the minority could govern the majority—reversing the Republican doctrine that the minority must submit to the will of the majority.

To apply this to the case of the Philadelphia county election. There are seventeen election districts in the county, and each sends one return judge. These seventeen return judges make the returns for all offices in which the city does not join. The city of Philadelphia sends one return judge, who unites with the seventeen judges in all matters requiring the joint action of the city and county, as in the case of Governor, Sheriff, County Commissioner, County Auditor, and Amendments. In such cases each of the eighteen judges has but one vote.

On Friday the 12th October, 1838, pursuant to law, the whole eighteen return judges met in Independence Hall, at the State House in the city of Philadelphia. The following are the names of the election districts, and of their respective judges—those in *italics* being represented by Federal judges, and those in Roman by Democratic judges—and those marked with a \* (six) are in the third Congressional district, and the residue (eleven) in the First Congressional District.

| DISTRICTS.  | JUDGES.                  |
|---|--------------------------|
| 1. <i>Spring Garden,*</i>                             | <i>Wm. G. Conrow,</i>    |
| 2. <i>Kensington,*</i>                                | Andrew Hague.            |
| 3. Southwark,   | Peter Binder.            |
| 4. <i>Moyamensing,</i>                                | <i>Joseph Shermer.</i>   |
| 5. Passyunk,  | Lewis Crousillat.        |
| 6. Kingsessing,                                       | Justice Cox.             |
| 7. <i>Blockley,</i>                                   | <i>Leonard Frailey.</i>  |
| 8. Roxborough,  | George W. Smick.         |
| 9. <i>Germantown,</i>                                 | <i>Charles A. Smith.</i> |
| 10. <i>Bristol,</i>                                   | <i>Wm. Wister.</i>       |
| 11. Lower Dublin, }<br>Byberry, and }<br>Moreland,* } | Charles Vansant.         |
| 12. <i>Oxford,*</i>                                   | <i>Wm. Overington.</i>   |
| 13. Unincorporated }<br>N. Liberties,* }              | J. H. Flitcraft.         |
| 14. N. Penn Township,                                 | Jesse Weiss.             |
| 15. S. Penn Township,                                 | Michael Pray.            |
| 16. West Philadelphia,                                | Benjamin Sage.           |
| 17. <i>Inc. N. Liberties,*</i>                        | <i>Bela Badger.</i>      |

And the 18th district is the *city of Philadelphia*, of which *Samuel Norris* was return judge.

The meeting was organized by the appointment of George W. Smick, of Roxborough, as Chairman, and of Samuel J. Robbins, of the city of Philadelphia, and John J. McCahen, of the district of Spring Garden, as Return Clerks. The judges being called, all answered to their names. On motion

of Wm. G. Conrow, the reporters for the daily papers were admitted into the room. On motion, it was resolved that the returns of the First Congressional District for the candidates for Congress be received. The returns being made for each election district in the First Congressional District, were

|                     |      |
|---------------------|------|
| For Lemuel Paynter, | 3675 |
| Joel B. Sutherland, | 2994 |
| Scattering,         | 5    |

The return was made out for Col. Paynter, and signed by nine of the eleven judges of the First District, including Messrs. Shermer, of Moyamensing, and Frailey, of Blockley. A motion was then made that the returns from the county of Philadelphia upon the Assembly ticket be now received. A motion was then made by W. G. Conrow, to postpone the further consideration of this motion, for the purpose of taking up the returns from the Third Congressional District, which was negatived—the seven Federal judges voting for it, and the ten Democratic judges against it. The original motion was then agreed to. Mr. Badger then stated, as the return judge for the Incorporated District of the Northern Liberties, that he desired to be heard by counsel. The returns from the Incorporated District of the Northern Liberties being then called for, a motion was made that the said returns be not received, until it be decided whether they are legal and just, or otherwise—ten yeas and seven nays. It was agreed to. Mr. Badger then presented the following protest:—

“I, Bela Badger, return judge of the District of the Northern Liberties, hereby solemnly protest *against the right of the judges here present*, to reject, or try or examine into the correctness of the returns from the District of the Northern Liberties, and I solemnly protest against the resolution which has just now passed.

“BELA BADGER.”

Oct. 12, 1838.

On motion, the meeting proceeded to examine the witnesses in relation to the vote in the incorporated district of the Northern Liberties. The witnesses examined were, Daniel Jeffras, Jacob R. Kline, John Abrams, Alexander Brown, Henry Simpson, Daniel Hotz, and Michael D. Wartman, who were all duly sworn or affirmed. It was proved that George Hacker, an inspector of the Fifth Ward, Northern Liberties, in a conversation with Mr. Abrams, said he would bet any thing there would not be a majority in that ward for the Democrats, there would be two hundred majority for the Whigs—if *there was not, he would make it two hundred*; and that Bela Badger, the return judge, said before the election *that he intended to cheat*. That, on the day of the election, the inspectors and clerks of the said five wards, and the judges, carefully concealed from the inspectors and clerks of the Sixth and Seventh Wards, the number of votes polled in each ward, and the number polled for each candidate, or the majorities or the votes, when the votes were counted off, although the votes in the Sixth and Seventh Wards were obtained by them several times during the day; and that when, during the day, any of the democratic inspectors or clerks came near the Federal windows, the Federal officers covered their tally lists and other pa-

pers with blank paper; and that at the counting off of the first five wards, the names on the tickets were not read aloud or announced by the judges or any one, but the same were kept entirely secret. That, when Mr. Hoeckly, who was making out the certificates or returns, was applied to, after the votes were counted, for the returns, he said Mr. Badger had them, and when Mr. Badger was asked for them, he said he had them not, although he was told that Mr. Hoeckly said he had them, and that he was the return judge. It was impossible to find out who was the return judge; and one of the inspectors of the Third ward said that they (the Federal inspectors, judges and clerks) *had agreed not to give the returns*, so that the Democratic inspectors and clerks were not permitted to see the certificates made out by the judges, nor even to know whether their own returns were correctly stated or not. The Federal inspectors (except in the Fourth Ward,) declined also to allow the boxes to be looked into before the election commenced, so as to show that there were no tickets in them before the polling began.

The registry of the Seventh Ward, and a part of one of the tally lists were traced into the possession of the Federal judge of that ward after the election had closed, and could not afterwards be found. The boxes of the first six wards were carried by the Federal judges to Squire Corfield's, the clerk of the court of Quarter Sessions, under Governor Ritner, who was not the nearest justice of the peace—all indicating an illegal combination, and a determination to conceal every thing from the Democratic inspectors and clerks of the Sixth and Seventh Wards, and leading inevitably to the conclusion, that the returns of the Northern Liberties were neither just nor legal. *All the seven judges*, and the inspectors and clerks of the first five wards were Federalists, and the whole election was conducted in one place—the commissioners' Hall of the Northern Liberties.

The remaining testimony related to the First Ward of Spring Garden, which we shall notice hereafter.

The whole testimony being closed, and Messrs. Ingersoll, Naylor and others, having been heard by the judges, a motion was made by Mr. Hague, and seconded by Mr. Michael Pray, that the returns from the incorporated district of the Northern Liberties be not received; and the yeas and nays being called; it was carried in the affirmative—*Yeas*, Messrs. Hague, Binder, Crousillat, Cox, Smick, Vansant, Flitcraft, Weiss, Pray, Sage, 10.—*Nays*, Messrs. Badger, Conrow, Shermer, Frailey, Smith, Wister, Overington, 7.

It was also decided, upon motion, that the returns from the Third Congressional district for members of Congress, with the exception of the incorporated district of the Northern Liberties, should be received.—*Yeas*, Messrs. Hague, Vansant and Flitcraft, 3.—*Nays*, Messrs. Conrow and Overington, 2.

The certificates from each election district, showing the number of votes given for each candidate, distinguishing the station or office he was voted for (with the exception of the incorporated district of the Northern Liberties,) were severally produced by the respective return Judges, and the votes read out by the respective judges, entered on *regular tally lists* by the return clerks, and the number of votes added together; and in the cases of Governor, Sheriff, County Commissioner and Amendments, the city certificates were produced by the city return judge, Mr. Norris, and also added to the county return. Regular duplicate returns were then made out, and signed by ten of the judges.

These returns gave the following results for the city and county of Philadelphia:

|                                 |        |
|---------------------------------|--------|
| For the Governor—Joseph Ritner, | 13,390 |
| David R. Porter,                | 11,138 |
| For Sheriff—Daniel Fitler,      | 12,887 |
| Thomas Hart,                    | 12,848 |
| Daniel Smith,                   | 11,560 |
| Issac W. Norris,                | 11,541 |

Daniel Fitler and Thomas Hart were accordingly returned as duly elected.

|  |        |
|--|--------|
| For County Commissioner—Jona. Johnsen, | 13,229 |
| William Piersol,                       | 11,184 |

And Jonathan Johnsen was accordingly returned as duly elected County Commissioner.

|                            |        |
|----------------------------|--------|
| For Auditor—George Norton, | 13,287 |
| Robert F. Christy,         | 11,038 |

And George Norton was accordingly returned as duly elected County Auditor.

|  |        |          |        |
|--|--------|----------|--------|
| Amendments—For,                        | 11,415 | Against, | 11,964 |
| For the county alone:                  |        |          |        |
| For Senate—James Hanna,                |        |          | 6,330  |
| Wm. Wagner, in place of A. M. Peltz    |        |          | 6,348  |
| Charles Brown,                         |        |          | 7,880  |
| S. Stevenson, in place of A. M. Peltz, |        |          | 7,870  |

And they accordingly returned and certified “that the said Charles Brown and Samuel Stevenson, the latter in the place of Alexander M. Peltz, dec’d. had the highest number of votes polled for Senators as aforesaid, and we hereby declare them to have been duly elected Senators to the General Assembly of the commonwealth of Pennsylvania.”

For the house of Representatives:

|                    |       |                     |       |
|--------------------|-------|---------------------|-------|
| Charles Pray,      | 7,870 | Abra’m Helfenstein, | 7,837 |
| John W. Ryan,      | 7,817 | John W. Nesbit,     | 7,818 |
| M. N. Carpenter,   | 7,869 | Thomas J. Heston,   | 7,819 |
| Thos. H. Brittain, | 7,899 | Benjamin Crispin,   | 7,982 |

And they accordingly returned and certified “that the said Charles Pray, John W. Ryan, Miles N. Carpenter, Thomas H. Brittain, Abraham Helfenstein, John W. Nesbitt, Thomas J. Heston and Benjamin Crispin, had the highest number of votes polled for Representatives as aforesaid, and we hereby declare them to have been elected members of the House of Representatives of the commonwealth of Pennsylvania.”

For Congress, First District as stated above.

For Congress, Third District—

|                       |       |
|-----------------------|-------|
| Charles Naylor,       | 3,354 |
| Charles J. Ingersoll, | 3,915 |

This return was signed by three judges, Messrs. Hague, Vansant and Flitcraft.

The following paper, in the course of the meeting, was handed to the judges:

“We, the undersigned return judges of the county of Philadelphia, protest against the examination of any witnesses, to examine and inquire into



the legality of the election held in the district of the Northern Liberties, on the second Tuesday of October, 1838 and all other matters relating thereto, or in any wise connected therewith, believing that we have no power to judge of the same.

Bela Badger, Chas. A. Smith, Wm. G. Conrow, William Wister, Wm. Overington, Joseph Shermer, Leonard Frailey."

*Philadelphia Oct. 12th. 1838*

*The meeting having transacted all its business, then adjourned at 8 o'clock in the evening, sine die—the whole eighteen return judges having been present during the whole meeting, and taking part in its proceedings.*

On Saturday morning, the 13th October, 1838, George W. Smick, chairman of the return judges, Samuel J. Robbins and John J. McCahen, return clerks, deposited one of each of the said official returns in the office of Robert Morris, Esquire, the prothonotary of the county of Philadelphia, and on the same morning, delivered the other set of official returns to John L. Wolf, Esquire, deputy Sheriff for the Sheriff, at the Sheriff's office, sealed and directed according to law, endorsing thereon the time of delivering the same. This set was sent up by the Sheriff to the Secretary of the Commonwealth, and the returns are now in his office.

On discovering that the Sheriff was not authorized to intermeddle with their returns, another set of duplicate returns for Governor. Amendments, Sheriffs, Congress, (First and Third districts.) Senate and House of Representatives, signed and sealed by the ten judges according to law, and under a sealed cover, directed to the Secretary of the Commonwealth, were, by the said judges, placed in the nearest Post Office, to wit: that of the city of Philadelphia. These returns are also in the office of the Secretary of the Commonwealth, having been delivered to him by the Post-Master at Harrisburg.

The following return (marked A) shows the particulars of the official returns thus made out, which are taken from the *tally lists* kept by the Return Clerks, under the direction of the Return Judges, on the 12th of October, 1838. Federalists in italics.

[For this return, see table A, at the end of the article.]

The returns thus made, were the legal returns required by law, and the only remedy, if an error was committed, is to contest, by petition, the seats of the returned members, upon the ground either of an "undue election," or of a "false return."

*Six of the minority, with the assistance of the city return judges, however, determined to overthrow the acts of the majority, done in an open meeting of all the judges, and, in violation of their oaths, to pretend to make false returns in favour of their own partizans. The following is a brief statement of the facts:*

After the adjournment of the meeting of the judges at eight o'clock in the evening, all the judges left the room (Independence Hall) in which they met. This room is on the first floor, and is the east room of the State House. The seven judges declared, in answer to a question by a citizen, that they intended not to hold any meeting, nor to make out any other returns. Messrs. Norris, Badger, Smith, Conrow, Wister, Overington and Shermer, notwith-

standing this declaration, went about half past nine o'clock on the same evening, *clandestinely*, and without any notice to the other judges, up stairs into the United States Court room, which is the west room, on the Second floor of the State House,—and there, with the certificates of the seven Federal judges of the county, and the city certificates, proceeded to make out what they have designated returns for city and county for Governor, Amendments, and Sheriff, and, for the county, for Senate and House of Representatives. Messrs. Badger, Conrow, and Overington, made a pretended return also for the Third Congressional District.—*But no return was made for the first District; nor for County Commissioner or Auditor.* After completing their work *in secret*, at near one o'clock on Saturday morning, they left their room. IT WAS A PRIVATE CONCLAVE TO WHICH NONE BUT THE INITIATED WERE ADMITTED. One set of these spurious papers was deposited in the prothonotary's office, and the other set, being handed to the Sheriff, was by him sent by express, in a State locomotive to the Secretary of the Commonwealth at Harrisburg.

These papers, as deposited in the Prothonotary's office, are a curiosity, which none but Federal ingenuity could have dreamt of, and which none but A BURROWES or A STEVENS could discover as having any of the requisites of legal official returns. They are, in the first place, signed by only six return judges of the county, being a clear minority of seventeen; and in the second place, they are only the addition of the votes at best of seven (Federal) districts out of seventeen election districts, omitting entirely ten (Democratic) districts without either notice or excuse. This we can make apparent by comparing the papers themselves with each other. The supposed return for Governor says:

“Having carefully examined the returns of the following election districts—the city of Philadelphia, Spring Garden, Northern Liberties, Blockley, Moyamensing, Bristol, Germantown and Oxford, and having added the vote therein contained, according to law, do certify that the following persons received the number of votes set opposite their names, for Governor of the commonwealth of Pennsylvania,

“Joseph Ritner had thirteen thousand, four hundred  
and eighty-five votes, 13,485”

“David R. Porter had eight thousand and forty one votes, ,8041”

It is signed by Messrs. Shermer, Smith, Badger, Wister, Conrow, Overington and Norris—seven out of eighteen judges.

The Sheriff's supposed return is still more extraordinary, and is also signed by these seven gentlemen. This certifies,

“That the following named persons received the number of votes set opposite their names for Sheriff for the city and county of Philadelphia, in the district of Spring Garden, the incorporated district of the Northern Liberties, Blockley, Bristol, Germantown, Oxford and the city of Philadelphia:

|  |        |
|--|--------|
| Daniel Fitler, twelve thousand, eight hundred and sixty-four | 12,864 |
| Thomas Hart, twelve thousand eight hundred and thirty-one    | 12,831 |
| Daniel Smith, eight thousand, five hundred and sixty         | 8,560  |
| Issac W. Norris, eight thousand five hundred and thirty-six  | 8,536” |

This, it will be seen, by name includes only six election districts in the county, but there is no doubt Moyamensing is actually included in the calculation. It is also to be observed that they do not declare who was the

highest in vote, nor do they pretend, as a return should do, to declare that any person is elected Sheriff. This runs throughout all their returns, and is, we understand their saving clause against the pains and penalties of perjury. **THEY HAVE NOT RETURNED ANY ONE AS ELECTED TO ANY OFFICE.**

The supposed return for the House of Representatives, which is a county return alone, is signed by these same six county conservators of the public morals, and is as follows:

"We the return judges of the several wards, townships and districts of the county of Philadelphia, do certify that, at an election held on the 2nd. Tuesday in October, A. D. 1838, the following named persons APPEAR to have the number of votes set opposite to their names for members of Assembly, in the District of Spring Garden, the Incorporated District of the Northern Liberties, Blockley, Moyamensing, Bristol, Germantown, and Oxford, viz.

|   |       |
|---|-------|
| Michael Day, six thousand, three hundred and forty six.       | 6,346 |
| Adam Woelpper, six thousand, four hundred and twenty-six.     | 6,426 |
| Wm. F. Hughes, six thousand, four hundred and thirty two.     | 6,432 |
| William Lloyd, six thousand, three hundred and fifty-five.    | 6,355 |
| Wm I. Crans, six thousand, four hundred and forty two         | 6,442 |
| Samuel F. Reed, six thousand, four hundred and fifty-five.    | 6,455 |
| Benj. R. Mears, six thousand, three hundred and fortysix.     | 6,346 |
| Jesse F. Smith, six thousand, three hundred and seventy-two.  | 6,372 |
| Charles Pray, four thousand, nine hundred and twelve.         | 4,912 |
| John W. Ryan, four thousand, seven hundred and fifty-seven.   | 4,757 |
| M. N. Carpenter, four thousand eight hundred and fourteen.    | 4,814 |
| T. H. Brittain, four thousand, eight hundred and forty-nine.  | 4,849 |
| A. Helfenstein, four thousand, seven hundred and seventy-one. | 4,771 |
| J. W. Nesbitt, four thousand, seven hundred and seventy.      | 4,770 |
| T. J. Heston, four thousand, seven hundred and seventy-nine.  | 4,779 |
| Benj. Crispin, four thousand, eight hundred and forty-nine.   | 4,849 |
| Henry Corbet, one.  | 1     |
| D. Bender."   |       |

This paper is exceedingly peculiar in its phraseology—it does not *certify* that the following named persons have so many votes—it confines itself to seven election districts—and says the votes are for *members of Assembly*, a term not known to the Constitution, or the election laws, as applicable to members of the House of Representatives. Under the Constitution of 1776, there was but one branch of the Legislature, and that was known by the name of the General Assembly; and, therefore, although Representative was the proper phrase as applied to a member of the House, yet there could be no ambiguity when he was called a member of the Assembly, or of the General Assembly. The Constitution of 1790, however, divided the Legislature into two branches; and the first section of the first article declares, that "the Legislative power of this Commonwealth shall be vested in a *General Assembly*, which shall consist of a Senate and House of Representatives." Members of either House are, therefore, members of Assembly or of the General Assembly, which is the Constitutional and legal term. In speaking of members of the House of Representatives, the Constitution calls them "Represent-



atives," particularly through the whole of the first article. By the second article, the Governor is chosen at the places where the citizens "respectively vote for Representatives"—and it is the House of Representatives which have the sole power of impeaching. The eighth article, which prescribes the oath of office, in the words "members of the General Assembly" includes both the members of the Senate and House of Representatives.

The act of 1799, speaks always of *Representatives* and *Senators*; and the 6th section of the act of the fourth of April, 1803, provides for cases where "members of the SENATE or HOUSE OF REPRESENTATIVES of the General Assembly of the Commonwealth are to be elected"—showing that where the General Assembly is mentioned, it is to designate the whole legislative power, which is vested in two distinct bodies, and not either of these bodies alone—the Senate or the House of Representatives. The enacting clause of all acts of Assembly, "Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met," is only a practical exemplification of the correctness of the objection to the language of the supposed return. For if these six judges were indicted for *perjury* or for a *wilful fraud*, in making a false return, they could say it was no return at all, as it was for a body which had no existence as a separate legislative body—that it was neither the Senate nor the House of Representatives—that it was in fact no return at all; and therefore, that, having broken no law, they could be liable to no penalty or punishment.

This paper, which returns no one as elected to any office, is indeed an entire and total nullity on its face, and might as well be used to show that the individuals named in it were commissioned as judges, as elected as members of the House of Representatives of this Commonwealth.

The supposed return for Senate is of the same description, signed by six only, made up of only the same seven Federal districts, and not declaring or returning any one as elected Senators. It is as follows:—

"We, the Return Judges of the several wards, townships and districts of the county of Philadelphia, do certify that having examined the several returns from the said districts, wards and townships, that the following named persons received the number of votes, set opposite their names, for Senators for the county of Philadelphia.

James Hanna, for four years, (4) (6288 votes) six thousand two hundred and eighty-eight votes.

Charles Brown for four years (4) four thousand eight hundred and fifty-eight votes.

William Wagner for unexpired term of A. M. Peltz, deceased, (6308) six thousand three hundred and eight votes.

Samuel Stevenson for unexpired term of A. M. Peltz, deceased (4839) four thousand eight hundred and thirty-nine votes.

As the supposed return for the amendments involves the same questions as the returns for the Senate, we shall state it first, and then consider them together. This spurious return for the amendments is from the same *seven districts* in the county, and the city of Philadelphia, and is signed by the *same six judges and the city judge*.

It is as follows:

"We, the Return judges of the several wards, townships, and districts, of the county of Philadelphia, do certify that, having examined the several

returns from the said districts, wards, and townships, for votes on the amendments to the Constitution, there were—

For the amendments, eight thousand three hundred and forty seven, 8,347  
Against the amendments, twelve thousand four hundred and twenty-

nine, 12,429"

The city return, signed by *ten of fifteen* judges (and the Governor's and some other city returns are signed by only *nine*) shows the city vote to have been—

For the Amendments, 3322, leaving the county vote by this paper, 5,025  
Against the Amendments, 6792, leaving the county vote by this paper, 5,637

|   |        |
|---|--------|
| Total votes in the county,  | 10,662 |
| Making in the city a majority against the Amendments, of          | 3,470  |
| And in the county, of   | 612    |
| Making a total majority in the city and county against the amend- |        |
| ments, according to this illegal and void paper, of               | 4,082  |

We now proceed to show this, and the Senate paper to contain only the same seven election districts of the county.

The vote for Mr. *Hanna* is 6288, and in the same districts we have seen Mr. *Lloyd*, one of the Federal candidates for Representative, has 6355.

The vote for Mr. Brown is 4858, and Mr. Crispin, one of the democratic representatives, has, in the same seven districts, 4849; and the votes on the amendments, which are more favorable, both in the city and the county, than the democratic vote for the other tickets, (but the whole number of votes on both sides is smaller than on any other ticket,) show also that the Incorporated District of the Northern Liberties, Moyamensing, Blockley, Germantown, Bristol, Spring Garden, and Oxford, were the only county districts used to make up these fraudulent papers.

|   |     |
|---|-----|
| The total majority in the city and county, by the official returns (which re- |     |
| jected the Northern Liberties) against the amendments, was                    | 549 |
| And adding in the Northern Liberties majority which was only                  | 869 |

|   |      |
|---|------|
| Make a total in the whole city and county against the amendments of | 1418 |
|---|------|

THIS THESE SEVEN JUDGES KNEW.

|   |      |
|---|------|
| The county majority in favor of the amendments by the official return |      |
| was   | 2921 |

|  |     |
|--|-----|
| Deducting the Northern Liberties majority against them | 869 |
|--|-----|

|  |      |
|--|------|
| It left a majority in the county in favor of the amendments of | 2052 |
|--|------|

THIS THESE SEVEN JUDGES KNEW.

And yet, holding only *seven* certificates from seven election districts of the county, they dared, *at midnight and in secret*, to rob the people of the whole State of their dearest rights, their "unalienable and indefeasible right to alter, reform, or abolish their government in such manner as they may think proper"—by adding together the votes of *seven Federal election districts and calling it the county of Philadelphia*, and giving a majority of 612 against the amendments in the county, and of 4082 in the whole city and county of Philadelphia.

The same remarks are applicable to the Senate paper, as to their intention

to cheat the people of the county of Philadelphia out of their Senators. For instance—

|  |       |
|--|-------|
| The majority in favour of Mr. Brown, over Mr. Hanna, by the official returns (as per table A) excluding the Northern Liberties, which was rejected by the judges, is | 1,550 |
| Deducting the majority for Mr. Hanna in the Northern Liberties,  | 979   |
| It left a majority in favor of Mr. Brown, of   | 571   |
| <hr/>  |       |
| The majority of Mr. Stevenson over Mr. Wagner, excluding the Northern Liberties, is  | 1,522 |
| And deducting the majority for Mr. Wagner in the Northern Liberties,   | 1,007 |
| It left a majority in favor of Mr. Stevenson, of   | 515   |
| <hr/>  |       |
| THIS THE SIX JUDGES KNEW.  |       |

And yet, in the face of these facts—all of which were known to them—on the evening of the 12th October last, these individuals, a minority, in violation of their oaths of office, and of all moral and religious obligation, made out these two papers which they knew to be false, with the intention of wilfully defrauding the people of the State out of their amended Constitution, and the citizens of Philadelphia county out of their duly elected Senators. “I will make a true and *perfect* return of the said election,” swore or affirmed, each of these judges. They made and signed what purports on its face to be perfect and true, which they knew to be imperfect and untrue. They were each guilty of gross, wilful, and corrupt perjury, and are liable for this (if it is the first offence) to punishment by solitary confinement at labor in the Eastern Penitentiary for a period of not less than one year, to forfeit a sum not exceeding five hundred dollars, and to be forever **DISQUALIFIED FROM HOLDING ANY OFFICE OF HONOR, TRUST, OR PROFIT, IN THIS COMMONWEALTH, AND FROM BEING ADMITTED AS A LEGAL WITNESS IN ANY MATTER OF CONTROVERSY.**”

They are also liable, under the 26d section of the act of 1779, to be punished for this **“WILFUL FRAUD”** in the discharge of their duties, by a forfeiture of not less than one hundred, nor more than five hundred dollars, to be for seven years disabled from holding any office of honour, trust, or profit, and to elect or give their votes at any general or special election in this State.

There can be no doubt, also, that they and their confederates who aided them in this foul plot—and it is rumored that some of the federal candidates were amongst them—are liable to be indicted and convicted for a conspiracy, which would subject them to fine and imprisonment at the discretion of the Court.

Still further, these same *seven* judges have made *no* returns at all for *County Commissioner* or *Auditor*—certain it is, that no such returns are to be found in the Prothonotary’s office, nor in the court of Quarter Sessions, and that the County Commissioner, *Jonathan Johnsen*; holds his seat at this moment, by virtue of the official return made as we have already stated by

the *ten* judges, which has been laid by the Prothonotary of the Common Pleas, before the court of Quarter Sessions, by whom it was ordered to be recorded according to law, and a certificate has thereupon been given to him, under the hand and seal of the Clerk of the Court of Quarter Sessions, of his said election, and of his qualifications according to the act of the 13th April, 1834.

Mr. Geo. Norton, the county Auditor elect, can also only claim his seat by virtue of the return of the ten judges; and if he should deem it invalid he has no claim to a seat in the Board of Auditors. It is clear also, that the Sheriff holds his office by virtue of the return made by the same judges; and the Governor has recognized the First District returns by proclaiming Col. Paynter as elected.

Now, the seven judges were as much bound to make the returns for County Commissioner and Auditor, as for any of the other offices; and if they were the proper and legal body to make them, then they have also committed perjury and wilful fraud in not so doing, and are liable to the punishments we have already stated. Still further, the three federalists, Messrs. Badger, Overington, and Conrow, in making out the spurious return for Mr. Naylor, have recognised as legal the returns of the six districts of Spring Garden, Northern Liberties, Kensington, Unincorporated Northern Liberties, Oxford, Lower Dublin Byberry and Moreland; and Messrs. Shermer and Frailey have, by signing Col. Paynter's certificate, recognised as legal the returns of the other eleven election districts of Southwark, Moyamensing, Blockley, Passyunk, Kingessing, West Philadelphia, North Penn Township, South Penn Township, Roxborough, Germantown, and Bristol making the whole seventeen election districts of the county—whilst the same Messrs. Badger, Overington, Conrow, and Shermer have omitted the ten democratic districts without excuse of any kind—thus showing, conclusively, their guilty intention in framing and signing those spurious returns.

Still further. The particulars of these false papers have never been published in a single Federal, Whig, or Anti-masonic paper of the city of Philadelphia, or elsewhere, although called upon to do so by the New York Journal of Commerce and other Whig papers, because they knew the fraud to be too base to bear a public exposure of its details. Still further—in publishing the statement of the votes for Governor and amendments, the National Gazette of the 15th November, the Pennsylvania Inquirer, and other Federal papers, have taken the official returns made by the ten judges as the official returns, which included the sixteen districts of the county, simply noting that the returns from the Northern Liberties were rejected by the return judges; and though *last, not least, the Federal judges of the incorporated districts of the Northern Liberties have never filed either returns, certificates, tally papers, lists of voters, or any other paper relating to the election in the office of the Prothonotary of the Court of Common Pleas, as required by law*—SHEWING EL-  
**ITHER THAT THEY CONSIDERED THEIR RETURNS AS LEGALLY REJECTED OR THAT THEIR ELECTION WOULD NOT BEAR THE SLIGHTEST INVESTIGATION BY THEIR FELLOW-CITIZENS.**

So that their best friends have repudiated the act of this minority faction,



and have treated them as entire nullities. The Table (B) exhibits the particulars of the false returns made by the six judges, with the assistance of the city judge. [For table B see end of article.]

This must carry conviction to the mind of every honest man of any party. We ask all to peruse this "Federal official" carefully, and then say whether any seven men in Pennsylvania ever before attempted to perpetrate so base a fraud upon their fellow citizens and upon the elective franchise. If a respectable party boasting to possess a large portion of the wealth, the decency, and the talent, can for a moment countenance such unqualified dishonesty, then they cannot complain if the majority, to enforce their rights, resort to first principles to sustain them. We know and trust that there are too many honest and upright men in the minority who will never allow themselves to be made the tools and panders of *men who have borrowed money without law, have squandered it without law*, and are now seeking to screen themselves by leading their party to the commission of acts of fraud, corruption and violence.

We have heretofore stated, at length, the principles which govern this case. We design not to recapitulate, but to apply them. We cannot however forbear quoting the following language of the highest judicial authority in this State before doing so. It is on all fours with the matter in hand. "In all matters of public concern the voice of the majority must govern. Whether the statute expressly authorises a majority to act, or is silent, the principle to be extracted from the numerous cases on this head, is, that where a number of persons are intrusted with powers, not of a mere private confidence, but in some respects of a general nature and all of them are assembled, *the majority will conclude the minority*. To this I would add, if regular notice be given to all; the MAJORITY, when they have met, become just as competent to decide as if the whole had met, *and in contemplation of law it is the act of all.*"

The whole seventeen judges from the seventeen election districts of the county, and the judge from the city of Philadelphia, met on Friday morning the 12th of October, 1838, in Independence Hall, in the State House, according to law; were organized by the appointment of a chairman and two return clerks; and the names of all the judges being called over, each judge answered to his name. Here was the "meeting of one judge from each district,"—Upon examination, and hearing of all parties interested, a majority of the said judges, on a full vote, rejected the returns of the Incorporated District of the Northern Liberties on the ground of fraud.—The same was done by the majority of the judges in the Third Congressional District.

The judges names, excepting that of the judge from the rejected district were then called in order, the votes were read by them from the certificates for the different offices, and for and against the amendments, taken down on tally lists by the Return Clerks, the additions made up, and the duplicate returns made out as we have already stated and signed by a majority of the judges in the presence of all the judges. When the whole was finished, the meeting adjourned, at about eight o'clock in the evening.

These were the only regular official returns made by the majority which "*conclude the minority.*" One set was next day deposited in the Prothonotary's office—another handed to the Sheriff, who should have received only

the amendments and the County Commissioners, and then another duplicate was sent by mail to the Secretary of the Commonwealth—both of which sets are now in his office.

Six out of seventeen judges, with the city judge then met at about half past nine in the evening, clandestinely, in another part of the building, and from the certificates from seven election districts only, and the city, make out papers, calling them returns, omitting the First District return, and the returns for County Commissioners and Auditor, which last are not required by law to be sent to Harrisburg. These acts are of course all null and void, and, if there were no other returns, these could never be received nor recognised as returns. They were the acts of a minority (who had been concluded by a majority)—not in a meeting of the judges, but done after the regular adjournment of the regular meeting—without notice clandestinely, secretly, in the dead of the night, and after their functions as judges had terminated as to all that was to be done on the third day after the election, which includes the making out of the duplicate returns.

One set of these spurious returns is deposited in the Prothonotary's office, and the other was handed to the Sheriff and was by him sent to Harrisburg by express, and he and the learned Secretary of the Commonwealth deem that this Federal express legalized these bastard returns not knowing that the mail, and not the Sheriff, is the proper conveyance for all but the returns on the amendments.

Such is the paltry farce which has been enacted to create confusion at Harrisburg; and we observe that the Secretary, violating all the rules has declined handing the returns to Mr. Shunk, the Clerk of the House of Representatives, in order that the proper paper may be prepared for the opening of the House. The Secretary who is a mere servant, will find, if he intrudes himself upon the Representatives of the people, or refuses to deliver up papers belonging to them, that he will be treated in such a manner as to form a legislative warning to future Secretaries, or any portion of the Executive branch, which dares to intermeddle with the rights of either branch of the General Assembly.

**WE NOW STATE IT, AND WE CHALLENGE CONTRADICTION THAT THE GOVERNOR AND THE CANAL COMMISSIONERS, WITH THE AID OF THE SECRETARY OF THE COMMONWEALTH, HAVE BORROWED LARGE SUMS OF MONEY WITHOUT ANY LAW, AND CONTRARY TO LAW; AND THAT THEY HAVE USED THIS MONEY AND THE PUBLIC TREASURE FOR PURPOSES NOT SANCTIONED BY LAW, AND IN VIOLATION OF THE CONSTITUTION, AND OF THEIR OATHS OF OFFICE, AND FOR WHICH THEY ARE LIABLE TO IMPEACHMENT.**

It is this cause, and none other that induces the State Administration, who have been repudiated by the people, to attempt by fraud or force, or both, to overturn the laws of the commonwealth and to threaten to commence a career of revolution, which they will find to their cost can always be better acted by a majority than a minority, and which must end in its actors being confined in the four walls of the Eastern Penitentiary, not during good behavior, but for a term of years.

A word or two as to some election frauds at the last election in the county of Philadelphia. By the Registry Act, an individual's name being on the registry list is CONCLUSIVE EVIDENCE OF HIS RIGHT TO VOTE. This gives rise FIRST, to frauds in making out the assessment by the assessor—secondly,

in making out the registry lists—thirdly, in the addition of names, or the refusal of challenges on the days for correcting the registry; and, lastly, on the day of the general election, by individuals personating the names on the registry of persons not in existence, or who are not legal voters, and even of persons who are sick, absent, or who have not voted. The First Ward, Spring Garden, will exemplify nearly all these different modes of abusing the elective franchise. *After the assessor of this ward had returned his assessment to the County Commissioner's office, eighty-five names were added about the 8th. or 9th. of April, 1838, and not by the assessor.* Of these eighty-five only two were placed on the registry list by the assessor, and of the other eighty-three, eighty either never had any existence, or never lived in the First Ward, Spring Garden. Some names, such as Flintian Flow, were evidently fictitious. This fraud was detected and publicly exposed, and it cut eighty-three names from the registry. The assessor then made out the registry list, which was returned to the Sheriff, and by him published. Upon a careful examination of it, it appeared that three hundred and sixty-two names on it were not those of qualified voters, being either not residents of the ward, or not between the ages of twenty-one and twenty-two, as marked on the list. The assessor was called on, and could not give the residences of any of these individuals. A list was accordingly made out of these three hundred and sixty-two names as challenged, and notices of challenge addressed to each were put in the Post Office. Upon Tuesday, the 3d. October, at 10 A. M., the inspectors and the judge who was also the assessor, met at the Commissioners' Hall in Vine Street, to correct the registry. This statement was handed to the inspectors and judge, with the proof of service of notices as above stated, and they were requested either to erase the names, or to mark the letter C opposite to them, so that they might be considered as challenged, and be examined on the day of the election. This was refused on that day, and on the next day also. Eleven of the three hundred and sixty-two were either stricken off as not qualified, or were ascertained to be qualified voters, and the challenges withdrawn. This left three hundred and fifty-one names which the inspectors and judge refused to strike off, or to mark the letter C opposite to. On Thursday the 5th October, on affidavit filed, a mandamus was granted, directed to the inspectors and judge, by the court of Common Pleas, returnable on Saturday, the 7th October. On that morning, the respondents appeared by counsel, and it was agreed that they should file an answer, and that the question should be argued on Monday, the 9th. It was accordingly argued by John M. Read, Esq. for the relator, and F. W. Hubbell, Esq. for the respondents. Mr. Read was stopped in reply, and Judge King delivered at once the unanimous opinion of the Court, that the inspectors and judges were bound to put the letter C opposite to each name on the list thus challenged. This was accordingly done. Of the three hundred and fifty-one names thus challenged, only thirty-seven appeared to vote on the day of election, and three of these were rejected. **THE BALANCE, 314, NEVER APPEARED AT ALL,** being men of straw they were cut off by this terrible letter C.

|  |           |       |
|--|-----------|-------|
| In 1837, the whole number in this ward on the corrected registry | list, was | 876   |
| In 1838 it was   |           | 1,317 |
| And the whole number of votes polled, was                        |           | 816   |

Leaving 501  
unaccounted for, of which the three hundred and fourteen was a large component part.

It was proved by three of the witnesses examined before the return judges on the 12th October, that, at about half past eight o'clock in the evening of the general election (ninth) one of the clerks (the judge, inspectors, and other clerk, not being at the window) of the first ward of Spring Garden, had his hand full of tickets, and that he leaned over the Congress box, and appeared to put something in with one hand, and take something out with the other. His face was flushed, and he appeared to be satisfied of his own guilt. The witnesses also stated that he was the same person who was believed to have cheated in a former election in the Fourth Ward.

At the close of the polls, when the judge came to close the boxes, there were three tickets lying between the Congress box and the Inspectors' box. The judge said to one of the witnesses, here, take these—I don't want them. Yes, says the witness, I will—they are part of the evidence in the case. One of the tickets appeared to have been voted, and was torn a little—it was for Charles J. Ingersoll; the other two were for Charles Naylor, and appeared not to have been voted.

In the Sixth and seventh Wards of the Northern Liberties, the Democratic Inspectors and Assessors were elected this fall by large majorities. The County Commissioners, according to law, published the Assessors elected——the Sheriff published the Federal Inspectors as elected. Upon inquiry, he has not the original return sent to him according to law, and which is a record in his office; and it is believed that it was sent to the Printer, who either wilfully or ignorantly made a mistake, *which the Sheriff has never corrected.*

The Commissioners of Philadelphia county, following the Federal Judges' example, have appointed, contrary to law, an Assessor in the place of the legally elected Democratic Assessor of West Philadelphia.

We now close this long exposition of facts in a case of vital importance to the People of Pennsylvania, by annexing table C, being an entire return of the whole county vote, including the Northern Liberties, which shows that the Democratic Senators and representatives have been elected by a clear majority of the electors even with the illegal returns from that district.\*

\*NOTE—By an error of addition, the Kensington Certificate gave Messrs' Hanna and Wagner, one hundred more votes than they received in that District. This correction being made, Mr. Brown has in the whole county including the Northern Liberties, 671 majority over Mr. HANNA: and Mr. Stevenson, 615 majority over Mr. WAGNER.



# Table A.

## OFFICIAL—PHILADELPHIA COUNTY.

| CANDIDATES.          | CITY.         |            |           |             |          |              |           |             |             |          |  |         |                                |                     |                     |                      |       |      |        |  | TOTAL<br>City & County |
|----------------------|---------------|------------|-----------|-------------|----------|--------------|-----------|-------------|-------------|----------|--|---------|--------------------------------|---------------------|---------------------|----------------------|-------|------|--------|--|------------------------|
|                      | Spring Garden | Kensington | Southwark | Moyamensing | Passyunk | Kingsessing. | Blockley. | Roxborough. | Germantown. | Bristol. | L. Dublin, By-<br>berry & More-<br>land. | Oxford. | Unincorporated<br>N. Liberties | N. Penn<br>Township | S. Penn<br>Township | West<br>Philadelphia | TOTAL | CITY |        |  |                        |
| GOVERNOR.            |               |            |           |             |          |              |           |             |             |          |  |         |                                |                     |                     |                      |       |      |        |  |                        |
| David R. Porter      | 1336          | 1792       | 1635      | 434         | 156      | 137          | 209       | 303         | 381         | 128      | 384                                      | 228     | 271                            | 266                 | 115                 | 123                  | 7982  | 3156 | 11,138 |  |                        |
| Joseph Ritner        | 1630          | 899        | 1003      | 427         | 54       | 51           | 208       | 308         | 481         | 147      | 348                                      | 277     | 128                            | 47                  | 90                  | 89                   | 6187  | 7203 | 13,390 |  |                        |
| SENATE.              |               |            |           |             |          |              |           |             |             |          |  |         |                                |                     |                     |                      |       |      |        |  |                        |
| Charles Brown        | 1356          | 1787       | 1541      | 422         | 155      | 136          | 206       | 405         | 363         | 126      | 378                                      | 229     | 267                            | 268                 | 118                 | 123                  | 7880  |      |        |  |                        |
| Samuel Stevenson     | 1358          | 1783       | 1559      | 421         | 155      | 136          | 207       | 405         | 363         | 126      | 377                                      | 229     | 267                            | 268                 | 118                 | 123                  | 7870  |      |        |  |                        |
| James Hume           | 1612          | 995        | 1090      | 415         | 54       | 48           | 208       | 298         | 500         | 144      | 347                                      | 274     | 124                            | 44                  | 88                  | 89                   | 6330  |      |        |  |                        |
| William Hagner       | 1612          | 996        | 1093      | 422         | 54       | 48           | 207       | 298         | 502         | 144      | 348                                      | 274     | 124                            | 44                  | 88                  | 89                   | 6343  |      |        |  |                        |
| ASSEMBLY.            |               |            |           |             |          |              |           |             |             |          |  |         |                                |                     |                     |                      |       |      |        |  |                        |
| Charles Pugh         | 1387          | 1799       | 1562      | 581         | 153      | 138          | 207       | 406         | 381         | 123      | 381                                      | 223     | 271                            | 267                 | 119                 | 122                  | 7870  |      |        |  |                        |
| John W. Ryan         | 1359          | 1787       | 1545      | 559         | 152      | 138          | 206       | 406         | 381         | 123      | 381                                      | 224     | 271                            | 267                 | 119                 | 121                  | 7817  |      |        |  |                        |
| Miles N. Carpenter   | 1354          | 1801       | 1560      | 580         | 153      | 138          | 207       | 405         | 379         | 123      | 382                                      | 226     | 272                            | 266                 | 119                 | 121                  | 7869  |      |        |  |                        |
| Thomas H. Brittain   | 1387          | 1801       | 1565      | 401         | 153      | 138          | 207       | 406         | 382         | 123      | 382                                      | 226     | 271                            | 267                 | 119                 | 121                  | 7890  |      |        |  |                        |
| Abraham Helfenstein, | 1358          | 1786       | 1547      | 568         | 153      | 138          | 207       | 406         | 382         | 123      | 383                                      | 225     | 272                            | 267                 | 119                 | 121                  | 7837  |      |        |  |                        |
| John W. Nesbit       | 1341          | 1789       | 1534      | 363         | 153      | 138          | 206       | 406         | 381         | 123      | 381                                      | 224     | 271                            | 267                 | 119                 | 121                  | 7818  |      |        |  |                        |
| Thomas J. Heston     | 1359          | 1785       | 1534      | 367         | 153      | 137          | 212       | 403         | 381         | 123      | 381                                      | 224     | 271                            | 267                 | 118                 | 121                  | 7819  |      |        |  |                        |
| Benjamin Crispin     | 1389          | 1804       | 1561      | 400         | 153      | 138          | 207       | 406         | 381         | 123      | 407                                      | 225     | 271                            | 267                 | 119                 | 121                  | 7922  |      |        |  |                        |
| Michael Day          | 1634          | 873        | 1083      | 466         | 57       | 50           | 208       | 301         | 482         | 144      | 340                                      | 279     | 122                            | 47                  | 86                  | 88                   | 6262  |      |        |  |                        |
| John Hooper          | 1638          | 897        | 1119      | 490         | 57       | 50           | 206       | 301         | 481         | 145      | 341                                      | 277     | 123                            | 47                  | 86                  | 91                   | 6354  |      |        |  |                        |
| Wm P. Hicok          | 1640          | 895        | 1120      | 409         | 58       | 50           | 208       | 301         | 481         | 145      | 343                                      | 277     | 123                            | 47                  | 86                  | 91                   | 6364  |      |        |  |                        |
| Wm Lloyd             | 1637          | 880        | 1092      | 466         | 57       | 50           | 206       | 301         | 481         | 145      | 340                                      | 277     | 123                            | 47                  | 86                  | 91                   | 6279  |      |        |  |                        |
| Wm J. Chems          | 1641          | 895        | 1155      | 510         | 56       | 50           | 207       | 300         | 481         | 145      | 351                                      | 277     | 123                            | 47                  | 86                  | 91                   | 6376  |      |        |  |                        |
| Samuel P. Ford       | 1642          | 896        | 1112      | 523         | 56       | 50           | 207       | 301         | 481         | 145      | 356                                      | 276     | 123                            | 48                  | 86                  | 91                   | 6375  |      |        |  |                        |
| B. R. Adams          | 1637          | 890        | 1092      | 466         | 57       | 50           | 208       | 301         | 482         | 142      | 359                                      | 277     | 122                            | 47                  | 86                  | 91                   | 6277  |      |        |  |                        |
| J. F. Smith          | 1637          | 882        | 1092      | 465         | 57       | 50           | 206       | 301         | 481         | 145      | 351                                      | 287     | 117                            | 47                  | 86                  | 91                   | 6275  |      |        |  |                        |
| SH. HUFF.            |               |            |           |             |          |              |           |             |             |          |  |         |                                |                     |                     |                      |       |      |        |  |                        |
| Daniel Smith         | 1441          | 1809       | 1599      | 471         | 154      | 138          | 210       | 408         | 390         | 133      | 377                                      | 232     | 282                            | 272                 | 125                 | 123                  | 8164  | 3306 | 11,560 |  |                        |
| L. W. Norris         | 1440          | 1808       | 1600      | 471         | 154      | 138          | 210       | 408         | 390         | 133      | 377                                      | 231     | 282                            | 273                 | 125                 | 123                  | 8166  | 3378 | 11,541 |  |                        |
| David Piller         | 1554          | 870        | 1082      | 585         | 54       | 49           | 207       | 290         | 477         | 139      | 359                                      | 271     | 113                            | 41                  | 78                  | 88                   | 5987  | 3900 | 12,887 |  |                        |
| Thomas Hart          | 1521          | 870        | 1081      | 584         | 54       | 49           | 207       | 290         | 477         | 139      | 359                                      | 270     | 113                            | 40                  | 78                  | 80                   | 5995  | 3880 | 12,842 |  |                        |
| ALDERMEN.            |               |            |           |             |          |              |           |             |             |          |  |         |                                |                     |                     |                      |       |      |        |  |                        |
| Against              | 1177          | 655        | 912       | 108         | 25       | 33           | 183       | 277         | 435         | 166      | 286                                      | 283     | 111                            | 67                  | 72                  | 79                   | 5175  | 6792 | 11,964 |  |                        |
| For                  | 1420          | 1756       | 1645      | 598         | 150      | 139          | 219       | 418         | 407         | 62       | 359                                      | 208     | 268                            | 239                 | 128                 | 127                  | 8098  | 3312 | 11,415 |  |                        |
| COUNTY COMMISSIONER. |               |            |           |             |          |              |           |             |             |          |  |         |                                |                     |                     |                      |       |      |        |  |                        |
| William Petersel     | 1382          | 1797       | 1591      | 457         | 155      | 138          | 209       | 405         | 355         | 124      | 377                                      | 222     | 271                            | 267                 | 118                 | 121                  | 7934  | 3234 | 11,154 |  |                        |
| J. Johnson           | 1590          | 938        | 1091      | 509         | 53       | 49           | 205       | 295         | 470         | 135      | 356                                      | 282     | 122                            | 42                  | 89                  | 87                   | 6157  | 6074 | 13,229 |  |                        |
| ADDITION.            |               |            |           |             |          |              |           |             |             |          |  |         |                                |                     |                     |                      |       |      |        |  |                        |
| Robert P. Christy    | 1380          | 1787       | 1501      | 448         | 152      | 136          | 211       | 406         | 371         | 123      | 373                                      | 222     | 271                            | 254                 | 119                 | 122                  | 7867  | 3172 | 11,038 |  |                        |
| C. Norton            | 1637          | 887        | 1118      | 506         | 54       | 49           | 204       | 299         | 469         | 141      | 356                                      | 276     | 120                            | 46                  | 88                  | 90                   | 6197  | 7094 | 13,287 |  |                        |

# B.—RETURN OF THE SIX JUDGES.

| CANDIDATES                      |  |                |              |           |             |          |         |               |  |  |
|---------------------------------|--|----------------|--------------|-----------|-------------|----------|---------|---------------|--|--|
| GOVERNOR.                       | David R. Porter,<br><i>Joseph Ritner</i> ,<br>SENAVE.  | Spring Garden, | Moyamensing, | Blockley. | Germantown. | Bristol. | Oxford. | N. Liberties. |  |  |
|                                 |  | 1530           | 434          | 200       | 381         | 128      | 228     | 2175          |  |  |
|                                 |  | 1680           | 427          | 208       | 481         | 147      | 277     | 3112          |  |  |
|                                 | C. Brown,<br>S. Stevenson, in place<br>of A. M. Peltz, dec'd.  | 1356           | 422          | 206       | 363         | 126      | 229     | 2156          |  |  |
|                                 | <i>W. Wagner</i> , in place<br>of A. M. Peltz, dec'd.  | 1353           | 421          | 207       | 363         | 126      | 229     | 3140          |  |  |
|                                 |  | 1612           | 415          | 208       | 500         | 144      | 274     | 3135          |  |  |
|                                 | ASSEMBLY.  | 1612           | 422          | 207       | 502         | 144      | 274     | 3147          |  |  |
|                                 | Charles Pray,<br>J. W. Ryan,<br>M. N. Carpenter,<br>T. H. Brittan,<br>A. Helfenstein,<br>J. W. Nesbit,<br>T. J. Heston,<br>B. Crispin,<br><i>Michael Day</i> ,<br><i>Alvin Woolper</i> ,<br>William P. Hughes,<br>William Loyd,<br>Samuel F. Reed,<br>Benjamin R. Jilfers,<br>Jesse F. Smith,<br>SENAVE. | 1337           | 381          | 207       | 381         | 123      | 225     | 2260          |  |  |
|                                 |  | 1339           | 359          | 206       | 381         | 123      | 224     | 2125          |  |  |
|                                 |  | 1331           | 380          | 207       | 379         | 123      | 226     | 2165          |  |  |
|                                 | 1337   | 401            | 207          | 382       | 123         | 226      | 2173    |               |  |  |
|                                 | 1338   | 368            | 207          | 382       | 123         | 222      | 2131    |               |  |  |
|                                 | 1341   | 363            | 206          | 382       | 123         | 224      | 2131    |               |  |  |
|                                 | 1339   | 367            | 212          | 381       | 123         | 224      | 2133    |               |  |  |
|                                 | 1339   | 400            | 207          | 381       | 123         | 225      | 2174    |               |  |  |
|                                 | 1634   | 466            | 208          | 482       | 144         | 279      | 3213    |               |  |  |
|                                 | 1643   | 490            | 206          | 481       | 145         | 277      | 3184    |               |  |  |
|                                 | 1640   | 499            | 208          | 481       | 145         | 277      | 3182    |               |  |  |
|                                 | 1637   | 466            | 206          | 481       | 145         | 277      | 3143    |               |  |  |
|                                 | 1641   | 510            | 207          | 481       | 145         | 277      | 3181    |               |  |  |
|                                 | 1642   | 523            | 207          | 481       | 145         | 276      | 3181    |               |  |  |
|                                 | 1637   | 466            | 208          | 482       | 142         | 277      | 3134    |               |  |  |
|                                 | 1637   | 465            | 206          | 481       | 145         | 287      | 3151    |               |  |  |
| AMENDMENTS,<br>FOR,<br>AGAINST, | Daniel Smith,<br>Isaac W. Norris,<br>Daniel Frier,<br>Thomas Hart,   | 1441           | 471          | 210       | 390         | 133      | 232     | 2287          |  |  |
|                                 |  | 1440           | 471          | 210       | 390         | 133      | 231     | 2283          |  |  |
|                                 |  | 1534           | 385          | 207       | 477         | 139      | 271     | 2951          |  |  |
|                                 |  | 1521           | 384          | 207       | 477         | 139      | 270     | 2953          |  |  |
|                                 |  | 1420           | 598          | 219       | 407         | 62       | 208     | 2111          |  |  |
|                                 | 1477   | 108            | 188          | 435       | 166         | 283      | 2980    |               |  |  |

Kensington.  
Southwark.  
Passyunk.  
Kingsessing.  
Roxborough.  
L. Dublin, By-  
berry & More-  
land.  
Unincorporated  
N. Liberties  
N. Penn  
Township.  
S. Penn  
Township.  
West  
Philadelphia.

TOTAL.

City

TOTAL  
City & County.

Above Ten Districts omitted by

the Six Judges,



And No Returns for County  
Commissioner or Auditor.

|      |      |       |
|------|------|-------|
| 1488 | 3156 | 8041  |
| 6282 | 7203 | 13485 |
| 4353 |      |       |
| 1439 |      |       |
| 6288 |      |       |
| 6308 |      |       |
| 4012 |      |       |
| 4737 |      |       |
| 4814 |      |       |
| 1849 |      |       |
| 4771 |      |       |
| 4770 |      |       |
| 4779 |      |       |
| 1849 |      |       |
| 6346 |      |       |
| 0426 |      |       |
| 6432 |      |       |
| 6555 |      |       |
| 6422 |      |       |
| 6455 |      |       |
| 6346 |      |       |
| 6372 |      |       |
| 5164 | 3396 | 8560  |
| 5158 | 3378 | 8536  |
| 3564 | 6900 | 12864 |
| 6591 | 6880 | 12831 |
| 5025 | 3322 | 8347  |
| 5637 | 6792 | 12429 |

INCLUDING REJECTED DISTRICT.

[illegible]



The foregoing pamphlet was published in the "Harrisburg Reporter" of Friday, the 30th of November, 1838, *four days* before the meeting of the Legislature of Pennsylvania in the State Capitol at Harrisburg; on the first Tuesday (the 4th) of December. It was placed in the hands of all the members of both Houses—it *shewed conclusively*—THE LAW TO BE:

1st—That there were *seventeen Election Districts* in the County of Philadelphia, of which six, to wit: *Spring Garden, Kensington, Lower Dublin, Byberry and Moreland, Oxford*, Unincorporated Northern Liberties, and *Incorporated Northern Liberties*, formed the third congressional district, and the remaining eleven, to wit: *Southwark, Moyamensing, Passyunk, Kingsessing, Blackley, Roxborough, Germantown, Bristol*, North Penn Township, South Penn Township, and West Philadelphia, formed the first congressional district. The *seven districts* in *Italics* being *Federal* and represented by *Federal Judges*, and the other ten districts being Democratic, and represented by Democratic Judges.

2nd—That each election district sends one return judge to the meeting of the return judges at the State House in the City of Philadelphia, on Friday the 12th October, being the third day after the election, and the city of Philadelphia also forms an election district, and sends one return judge to this meeting, who joins in those returns in which the City and County have a joint vote.

3d—That of the judges so met, "as in all matters of public concern the voice of the majority must *govern*,"—and the act of "*the majority must conclude the minority*."

4th—That the return judges, or a majority of them so met, make out duplicate returns for Governor, Senate, House of Representatives, Members of Congress, and Sheriff; deposit one set of each in the Prothonotary's office of the County, and the other set, properly directed, is put under a sealed cover, directed to the Secretary of the Commonwealth, and placed by the Judges in the nearest Post Office, *and that the Sheriff has nothing to do with any of these returns*, and that the Secretary is merely a servant, or like a Postmaster, through whom the returns are to be passed, to the bodies or persons to whom the Law directs their delivery.

5th—That the same judges make out duplicate returns for and against the amendments, one set is deposited in the Prothonotary's office, and the other is handed to the sheriff, who transmits it to the Secretary of the Commonwealth, *and this is the only return which is to be sent to Harrisburg, with which the Sheriff can intermeddle at all*.—

6th—That the same judges make out duplicate returns for *County Commissioner*, one is deposited in the Prothonotary's office, and the other is handed to the Sheriff, who is bound to hand *it over to the Clerk of the Court of Quarter Sessions*—and that the judges make out only *one return for County Auditor*, which is deposited in the Prothonotary's office. And that a notice, in writing, of his election, and a certificate of the returns of his election signed by the Judges, are given to each of the members elect.—

AND IT THEN SHOWED CONCLUSIVELY, THE FACTS TO BE:

1st—That the seventeen Return Judges from the seventeen election districts of the County, and the Return Judge from the City of Philadelphia, met at the State House, in the City of Philadelphia, on Friday

the 12th October 1838, and organized by the appointment of a Chair and two return clerks.

2nd—That after an examination of several witnesses, and the hearing of counsel on both sides, the return or certificate from the Incorporated Northern Liberties was rejected by the Judges, ON ACCOUNT OF FRAUD, by a vote of Ten to Seven.

3d—That the Judges then called for the Certificate from the City, and the other sixteen election districts, they were read off by the respective judges, and entered upon regular tally-lists by the Clerks, the additions made, and duplicate returns made out for Governor, Senate, House of Representatives, Members of Congress, Sheriff, Amendments, and County Commissioner, and a single return for County Auditor, which were signed by the Ten Judges.—

☞ Table (A) shows the particulars of these Official Returns.

4th—That all the Judges were present, whilst these official returns were made out and signed, and remained in the room until the adjournment took place at 8 o'clock in the evening.

5th—That Six of the Federal County Judges, and the City Judge, met CLANDESTINELY in another room up stairs, at about half-past nine o'clock the same evening, made out the additions of votes in the seven Federal Districts of the County, and in the City, and made out spurious returns for Governor, Amendments, Senate, House of Representatives, and Sheriff, comprising only the votes in these Seven Districts of the County and omitted entirely the Ten Democratic Districts.—They made out no pretended returns for County Commissioner or Auditor.

☞ For these Spurious Returns, see Table (B). ☞

☞ NOTE—The Blockley vote was taken, not from the Blockley Certificate, but from the tally-lists which were in the possession of Mr. Robbins, one of the Clerks, and from the same papers the Six Judges could have taken the votes of the other Ten Districts..

6th—That these spurious papers were signed AFTER MIDNIGHT by this minority Rump, handed to the Sheriff who attended to do their bidding, and were by him sent to Harrisburg early on Saturday morning, by an Express Locomotive.

7th—That of the regular official returns signed by the Ten Judges, one set was deposited by the Chairman of the return judges, in the Prothonotary's Office, on Saturday morning the 13th October, and the other set was handed to the Sheriff's deputy, for the Sheriff, on the same morning, by the same Gentleman. The Sheriff sent these returns also to Harrisburg, and they regularly reached the Secretary of the Commonwealth, and were deposited in his office.

8th—That another set of duplicate returns for Governor, Amendments, Congress, Senate, House of Representatives, and Sheriff, were made out by the Ten Return Judges, placed under a sealed cover, directed to the Secretary of the Commonwealth, and placed in the Post Office of the City of Philadelphia.—These also were delivered to the Secretary, and are in his office.

9th—That each member of the Senate and House, received a notice in writing of his election, and also a certificate of the returns of his election, signed by the Ten Judges.

10th—That including the illegal returns from the Incorporated Northern Liberties—the two Democratic Senators, and the eight Democratic Representatives, were elected by a clear majority of the electors.

in the County, including this rejected district.—See Table (C) for the particulars of the returns of the whole County, including the Incorporated Liberties.

11th—That the Federal County Commissioners, and Federal County Auditor, hold their seats only by the returns made by the Ten Judges, as also must the Sheriff. §

12th—That the Six Federal County Return Judges, and the Federal City Return Judge, have rendered themselves liable to indictments for PERJURY, WILFUL FRAUD, and CONSPIRACY, in making out these false and spurious returns.

13th—That gross frauds were attempted in the First Ward Spring Garden.

**THE RESULTS OF THIS CONSPIRACY, OF THE SIX FEDERAL COUNTY RETURN JUDGES AND THE FEDERAL CITY RETURN JUDGE WERE AS FOLLOWS.**

That Joseph Ritner, Governor of Pennsylvania, Thomas H. Burrowes, Secretary of the Commonwealth, Thaddeus Stevens, President of the Board of Canal Commissioners, and Charles B. Penrose, Speaker of the Senate; agreed and determined.

1. That Burrowes should withhold all the returns of the majority, and send into the Senate, and House, only the false returns of the minority.

2. To organize a *Rump House* with 44 whigs, and the 8 whigs who were not elected from the County of Philadelphia. The Senate to swear in Messrs Hanna and Wagner, *forthwith*; and then the Senate and Governor to recognize the Rump House, and as a Legislature proceed to pass laws. To legalise illegal and unconstitutional loans. To cover over the illegal use made by the State Administration, of the public treasure. To continue the Board of Canal Commissioners, and the Gettysburg Rail Road; and if Governor Porter could not be cheated out of his election; then, to strip him at once of all power, and patronage; and lastly to increase the capital of the Bank of the United States.

3. That in pursuance of this conspiracy, thus framed by the State Administration, and agreed to in CAUCUS,

MR. STEVENS disorganized the House of Representatives, by electing a minority Speaker,

MR. PENROSE swore in Messrs Hanna and Wagner, as members of the Senate, and

MR. FRALEY of the city of Philadelphia, commenced reading a preamble and resolution, recognizing the *rump minority house*. The last was not done, because Messrs Penrose, Fraley & Co., became alarmed at the consequences of their own schemes. Frustrated in this attempt, Governor Ritner issued his famous proclamation of the same day, (4th December,) his Penrose order of the 5th, to General Patterson, wrote to Captain Sumner, of the United States Dragoons, for his corps; and then sent HIS Speaker of the Senate, and Major General Samuel Alexander, to supplicate him for mercy's sake to come to his assistance; made an unconstitutional requisition on the President for troops, and received a constitutional answer; and in direct violation of the Constitution and the laws of the State, brought on the Sabbath, 1000 armed soldiers to Harrisburg, to overawe the House of Representatives.



5. Mr. Speaker Penrose, under military protection, committed two gross frauds upon Philadelphia County, the elective franchise, and the people of the state, by declaring as official, the spurious minority return of the seven districts, making the majority in the city and county

|                         |      |                  |
|-------------------------|------|------------------|
| Against the amendments, | 4082 |                  |
| Instead of only         | 1418 | —difference 2664 |

|                              |      |                  |
|------------------------------|------|------------------|
| And against Governor Porter. | 5444 |                  |
| Instead of only              | 3189 | —difference 2255 |

6. The final result has been the recognition of the House by the Senate and Governor, and the forced resignation of Mr. Wagner, and the rejection of Mr. Hanna: both pocketing pay and mileage, for disturbing the peace of the Commonwealth, having first sent the following letter to the Senate,

“SENATE CHAMBER,  
8th December, 1838. } ”

The subscribers, Senators from the second Senatorial district, respectfully representing to the Honourable, the Senate, *that in their opinion, no honourable man, so long as any doubt exists as to the validity of the election or the truth of the return by which he holds his seat in the Senate, would be disposed to exercise any of his functions as a Senator, request that they may be permitted to decline participating in the proceedings of the Senate until all doubt that may be professed as to their right to do so shall be removed.*”

WM. WAGNER.

JAS. HANNA.”

And then four days afterwards moved to dissolve Hanna's committee, because Wagner's name was not put into the box, so that he might be a judge in fact in his own case; and voted on all occasions, and particularly against the recognition of the House, by the Senate, on the 25th December.

*Mr. Hanna's Committee made the following report.*

“The Committee to whom was referred the petition of citizens of the county of Philadelphia, contesting the validity of the return and election of James Hanna to a seat in the Senate of Pennsylvania, Report: That they have had the subject under consideration from day to day, since the day of their appointment; and have given the fullest opportunity to all parties, for a fair and full investigation, and after examining the necessary papers and ballot boxes, and after having heard all the evidence of the parties, are fully satisfied that the *return under which James Hanna took his seat is invalid, inasmuch as it contains but seven out of the seventeen Election Districts of the county of Philadelphia, and was signed but by six of the seventeen return Judges of said county; and they are furthermore satisfied that Charles Brown received at the last General Election the highest number of legal votes for Senator for said County, viz: six hundred and seventy-seven votes more than the said James Hanna.* The Committee therefore report that the *return on which James Hanna took his seat was invalid, and that the said Charles Brown having received the highest number of legal votes given at the late General election for Senator for the county of Philadelphia, is entitled to his seat.*”

CHARLES FRAILEY  
SAMUEL HAYS

JOHN MILLER  
E. KINGSBURY Jr.  
DAVID FULLERTON.”

Mr. Hanna having withdrawn from the contest; Mr. Brown could not go into the investigation of the frauds in the three Federal Districts of Spring Garden, Northern Liberties, and Moyamensing. These will be the subject of a thorough investigation; one fact alone proves gross fraud:—In the First ward Northern Liberties, the taxables were 687 and the votes 704—103 per cent on the taxables. Governor Ritner has rewarded Messrs Hanna, Badger and Corfield, by appointing them to offices in the row, for services at the late election.

Such is the history of the RUMP rebellion of Pennsylvania, caused by seven Federal return judges, and ten Federalists who went to take forcible possession of seats to which they knew, they were neither returned nor elected.







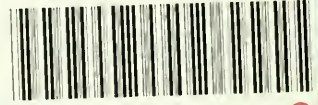








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